

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

STEVEN L. MARVIN,

Plaintiff,

Case No. 1:16-cv-135

v.

HON. JANET T. NEFF

JANET CABLE and UNITED STATES  
OF AMERICA,

Defendants.

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**OPINION AND ORDER**

Plaintiff, proceeding pro se, filed this action in state court in December 2015 against Defendant Cable, an employee of the Internal Revenue Service (IRS), seeking a declaratory judgment regarding certain actions or omissions of Defendant Cable during her examination of his 2012 and 2013 taxes (Dkt 1-1). Defendant Cable removed the matter to this Court and filed a motion requesting that the United States be substituted as the proper defendant and that Plaintiff's complaint be dismissed (Dkt 14). Plaintiff filed a motion, requesting that the Court remand this case back to state court (Dkt 13). The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R&R, Dkt 22), recommending that this Court deny Plaintiff's motion to remand and grant Defendant's motion to substitute the United States and dismiss this case for lack of subject-matter jurisdiction.

The matter is presently before the Court on Plaintiff's objections to the Report and Recommendation (Dkt 23), to which Defendant filed a response (Dkt 24). Plaintiff filed a motion to

strike Defendant's response (Dkt 26), to which Defendant filed a response (Dkt 27) and Plaintiff filed a reply (Dkt 29).<sup>1</sup> In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. For the reasons that follow, the Court denies Plaintiff's motion to strike, denies Plaintiff's objections, and issues this Opinion and Order.

Plaintiff's objections lack merit.

Plaintiff "adamantly denies he failed to serve his summons properly from the State Court action," asserting that "the Federal entity ... was properly served by mail" (Obj., Dkt 23 at PageID.94). However, Plaintiff alleges no facts that can establish proper service of Defendant Cable, and Plaintiff therefore fails to identify any error in the Magistrate Judge's removal analysis.

Second, Plaintiff "denies the Defendant [Cable] can hide behind the UNITED STATES OF AMERICA, and so name herself as such" (Obj., Dkt 23 at PageID.92). However, Plaintiff fails to identify any facts to rebut the certification that Cable was acting within the course and scope of her federal employment, and Plaintiff therefore fails to identify any error in the Magistrate Judge's analysis under 28 U.S.C. § 2679(d)(1) to substitute the United States as the proper defendant.

Last, Plaintiff asserts that the IRS is a corporation and that a corporation is "not entitled to sovereign immunity" (Obj., Dkt 23 at PageID.92). However, Plaintiff's assertion lacks merit. The IRS is established as a bureau of the Department of the Treasury and is therefore included within the protection of sovereign immunity. 26 U.S.C. § 7801(a). *See Dunn v. I.R.S.*, No. CIV.A. 07-10528, 2007 WL 2050830, at \*1 (E.D. Mich. July 17, 2007) (determining that the plaintiff's argument that

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<sup>1</sup>There is no provision in this Court's local rules for the filing of a reply to a response to a non-dispositive motion, but the Court has nonetheless considered Plaintiff's pro se arguments therein.

the IRS is a private corporation is “without merit and has been rejected by the courts”); *Henry Vlietstra Plastering & Acoustical Co. v. I.R.S.*, 401 F. Supp. 829, 832 (W.D. Mich. 1975) (“There is a host of constitutional and statutory authority in support of the IRS being an agency of the United States.”). Accordingly, Plaintiff fails to identify any error in the Magistrate Judge’s analysis of the Court’s subject-matter jurisdiction.

In sum, Plaintiff’s objections do not demonstrate that a result other than the Magistrate Judge’s recommendation is warranted. The Court will therefore deny Plaintiff’s objections and adopt the Report and Recommendation as the Opinion of the Court. As the Court’s decision terminates this action, the Court will also enter a corresponding Judgment. *See* FED. R. CIV. P. 58. Accordingly:

**IT IS HEREBY ORDERED** that the Objections (Dkt 23) are DENIED and the Report and Recommendation (Dkt 22) is APPROVED and ADOPTED as the Opinion of the Court.

**IT IS FURTHER ORDERED** that Plaintiff’s Motion to Remand (Dkt 13) is DENIED.

**IT IS FURTHER ORDERED** that Defendant’s Motion to Dismiss (Dkt 14) is GRANTED, and the Complaint is DISMISSED for the reasons stated in the Report and Recommendation.

**IT IS FURTHER ORDERED** that Plaintiff’s Motion to Strike (Dkt 26) is DENIED as moot.

Date: August 25, 2016

/s/ Janet T. Neff  
JANET T. NEFF  
United States District Judge